CONFRONTATION CLAUSE

Ohio v. Clark, --- U.S. --- (2015)
Decided June 18, 2015

FACTS: On March 17, 2010, Clark dropped off his girlfriend's son (L.P., age 3) at a Cleveland day care. (His girlfriend was hundreds of miles away, engaging in prostitution, at his behest.) In the lunchroom, a teacher, Whitley, noticed that L.P. had a bloodshot and bloodstained eye and she asked him what happened. He said eventually that he fell. Looking more closely, she saw red "whip" marks on his fact and called over the lead teacher, Jones. She immediately took the child to Cooper, her supervisor, who further questioned him. He "seemed kind of bewildered" and identified "Dee Dee," who was recognized to be his name for Clark. L.P. was new to the school and Jones was not sure he understood the question. Cooper told them that whoever saw the child first had to make a report, and the appropriate report was made under Ohio state law.

In response, a county child services worker arrived to question L.P. While doing so, Clark arrived and denied responsibility for the injuries – and was allowed to leave with the child. The next day, the children (L.P. and his 2-year old sister) were located at the home of the girlfriend's mother, and both children were examined. Both showed signs of recent physical abuse.

Clark was charged with various counts of assault, endangering the children and domestic violence. L.P. was not allowed to testify at trial, as he was considered legally incompetent under state law due to his age, but his out of court identification of Clark as his abuser was admitted. (This was done under an Ohio Rule of Evidence.) Clark was convicted of most of the charges. He appealed through the Ohio state courts, arguing that it was a violation of his confrontation rights when the various individuals who had questioned L.P. were permitted to testify as to what the child had said. The appellate court reversed and remanded the case, and the state challenged only the exclusion of Whitley and Jones. The Ohio Supreme Court noted that state law "imposes a duty on all school officers and employees, including administrators and employees of child day-care centers, to report actual or suspected child abuse or neglect." It agreed that questioning a student about a suspect injury is within that duty, but also did a "Confrontation Clause analysis" which requires that the court "ascertain the 'primary purpose' for the questioning." The Court noted that:

> … the circumstances objectively indicate that the primary purpose of the questions asked of L.P. was not to deal with an existing emergency but rather to gather evidence potentially relevant to a subsequent criminal prosecution. His teachers reacted to manifest signs of child abuse and complied with their statutory and professional duties to report it to child-protection authorities. They did not seem to believe his story that he had fallen and instead focused on who caused the injuries. Notably, Jones's first question on seeing L.P. was "Who did this?" And his teachers did not treat the situation as involving any ongoing medical emergency. L.P. did not complain of his injuries, he did not have any need for urgent medical care, and his teachers did not render any medical treatment. Immediately after L.P. responded, Whitley called 696–KIDS and made a report, and shortly thereafter, a social worker, Little, arrived at the school to further investigate the allegation of abuse; within two days, both teachers gave formal statements to police.

The court noted that "when teachers suspect and investigate child abuse with a primary purpose of identifying the perpetrator, any statements obtained are testimonial for purposes of the Confrontation Clause." The Court upheld the lower court's decision to exclude the testimony of the teachers, holding them to be "agents of law enforcement" for the purpose of the questioning and the reversal of Clark's conviction.
The State requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Does a statement made to a teacher by a young child implicate the Confrontation Clause?

HOLDING: No

DISCUSSION: The Court looked to Crawford v. Washington, in which the Court had concluded that the Sixth Amendment "prohibits the introduction of testimonial statements by a nontestifying witness, unless the witness is "unavailable to testify, and the defendant had had a prior opportunity for cross-examination."[1] However, Crawford did not provide an "exhaustive definition of "testimonial" statements." In later cases, including Davis v. Washington and Hammon v. Indiana,[2] the Court had "labored to flesh out what it means for a statement to be "testimonial," and created the "primary purpose" test:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

In both cases, however, the statement in question was made to law enforcement. In Michigan v. Bryant, which also involved a statement made directly to law enforcement, the Court emphasized that it must "consider all of the relevant circumstances."[3] In particularly, it focused on an "ongoing emergency," and the "informality of the situation and the interrogation." The Court allowed that standard rules of evidence, in determining whether a statement could be considered reliable, would also be relevant. The Court agreed that "a statement cannot fall within the Confrontation Clause unless its primary purpose was testimonial," and if it is not testimonial, the decision falls to the respective state or federal rule of evidence.

In this case, the questioners were preschool teachers, not law enforcement, and as such, the Court was "presented with the question we have repeatedly reserved: whether statements to persons other than law enforcement officers are subject to the Confrontation Clause." Because some statements to non-law enforcement officers could raise a constitutional issue, the Court declined to adopt a categorical rule, while acknowledging that "such statements are much less likely to be testimonial than statements to law enforcement officers." With respect to L.P., the "statements occurred in the context of an ongoing emergency involving suspected child abuse." The teachers needed to determine if they would be able to release him to his guardian (Clark) at the end of the day, and their

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[1] 541 U.S. 36 (2004).
[2] 547 U. S. 813 (2006).
[3] 562 U. S. 344 (2011).

"immediate concern was to protect a vulnerable child who needed help." The Court equated the questioning to Davis, which although more harried, was also intended to identify a person involved in an ongoing situation. What they said was "informal and spontaneous."

Further, the Court agreed, "statements by very young children will rarely, if ever, implicate the Confrontation Clause," as they would not even understand the criminal justice system or the concept of prosecution. The Court agreed that such statements had long been admitted under the common law.

The Court concluded:

> Statements made to someone who is not principally charged with uncovering and prosecuting criminal behavior are significantly less likely to be testimonial than statements given to law enforcement officers. It is common sense that the relationship between a student and his teacher is very different from that between a citizen and the police. We do not ignore that reality. In light of these circumstances, the Sixth Amendment did not prohibit the State from introducing L.P.'s statements at trial.

Further, the Court agreed, that Clark's attempt to equate the teachers to law enforcement, because of the mandatory reporting laws, was flawed. A "mandatory reporting statute[] alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution."

The decision of the Supreme Court of Ohio was reversed, and the case remanded for further proceedings.

Full Text of Opinion: http://www.supremecourt.gov/opinions/14pdf/13-1352_ed9l.pdf